IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: Fabio GIANNETTI)	On Appeal to the Board of Patent
)	Appeals and Interferences
)	
Application No.: 10/656,776)	Group Art Unit: 2178
)	
Filed: September 4, 2003)	Examiner: Manglesh M. Patel
)	
For: "METHOD AND SYSTEM FOR)	Date: May 25, 2007
AUTHORING CONTENT")	

(OIPE stamp: MAY 30 2007 PATENT & TRADEMARK OFFICE)

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the final office action mailed on December 22, 2006 for the above identified patent application. The notice of appeal was timely mailed on March 21, 2007 and filed by the Office on March 26, 2007. This appeal brief is timely.

REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of the Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any other prior and pending appeals, interferences or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal, other than the appeal filed in this application by a notice mailed on March 21, 2007.

STATUS OF CLAIMS

Claims 1-14 and 18 are currently pending. Claims 15-17 were cancelled and claim 18 was added in the preliminary amendment mailed on September 4, 2003.

Claim 7 was objected to in the office action mailed on June 13, 2006 as having been omitted from the claims listing filed by the applicant as part of the amendment and response mailed on March 16, 2006. The applicant explained in the amendment and response mailed on September 27, 2006 that this claim had been inadvertently omitted from the earlier claims listing. The Examiner withdrew the objection to claim 7 in the final office action mailed on December 22, 2006. In the Detailed Action, however, the Examiner listed the pending claims as being claims 1-1, 8-14, and 18 and did not state the status of claim 7 (allowed, rejected or objected-to). It is believed that the Examiner simply copied the Detailed Action, apart from the response to arguments, from the previous office action (June 13, 2006), in which the Examiner suspected that claim 7 had been canceled.

Claims 1-14 and 18 are the subject of this appeal and are reproduced in the accompanying claims appendix.

STATUS OF AMENDMENTS

No amendment after final rejection has been filed.

SUMMARY OF CLAIMED SUBJECT MATTER

The invention described and claimed in the present application relates to a method of authoring content and particularly, although not exclusively, to content to be processed by a web server, such as a document defining a web page, and displayed by a diversity of devices. It also relates to a system for authoring such content. Specification at page 1, lines 3-5, 13, and 31.

The standard tools for authoring a web page typically prompt the author to produce a document in which the content and the style are embedded in a single file defining the document. Specification at page 2, lines 10-12. An example of a document is shown in Figure 2 of the present application, reproduced below:
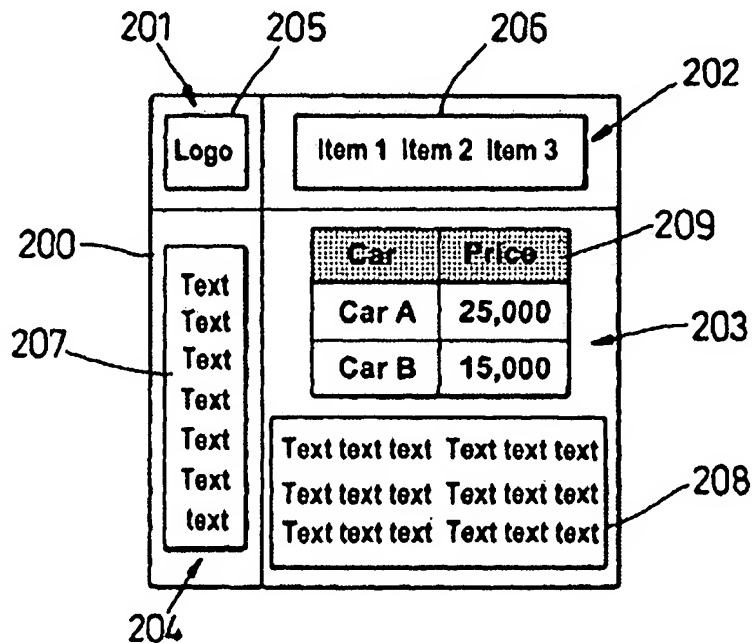

Fig. 2

As may be seen from Figure 2, reorganizing the layout without moving the content, or changing the content without reorganizing the layout, will be difficult when the content and the style are embedded in a single file. Specification at page 2, lines 12-14.

Claimed invention

The independent claims involved in this appeal are claims 1, 11, 14, and 18.

Independent claim 1

Figure1 of the instant application, reproduced below, schematically shows the architecture of a computer capable of acting as a server for a method according to the disclosure of the application:
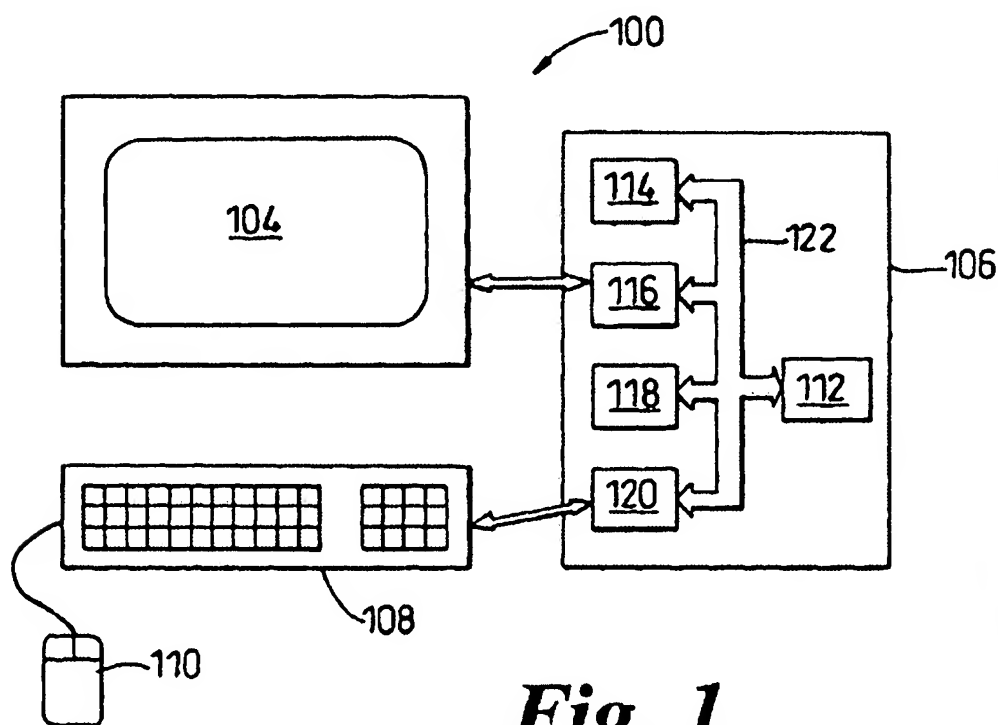

Fig. 1

Figure 3 of the instant application, reproduced below, is a flow chart of the steps performed in one example of a method according to the disclosure of the application:
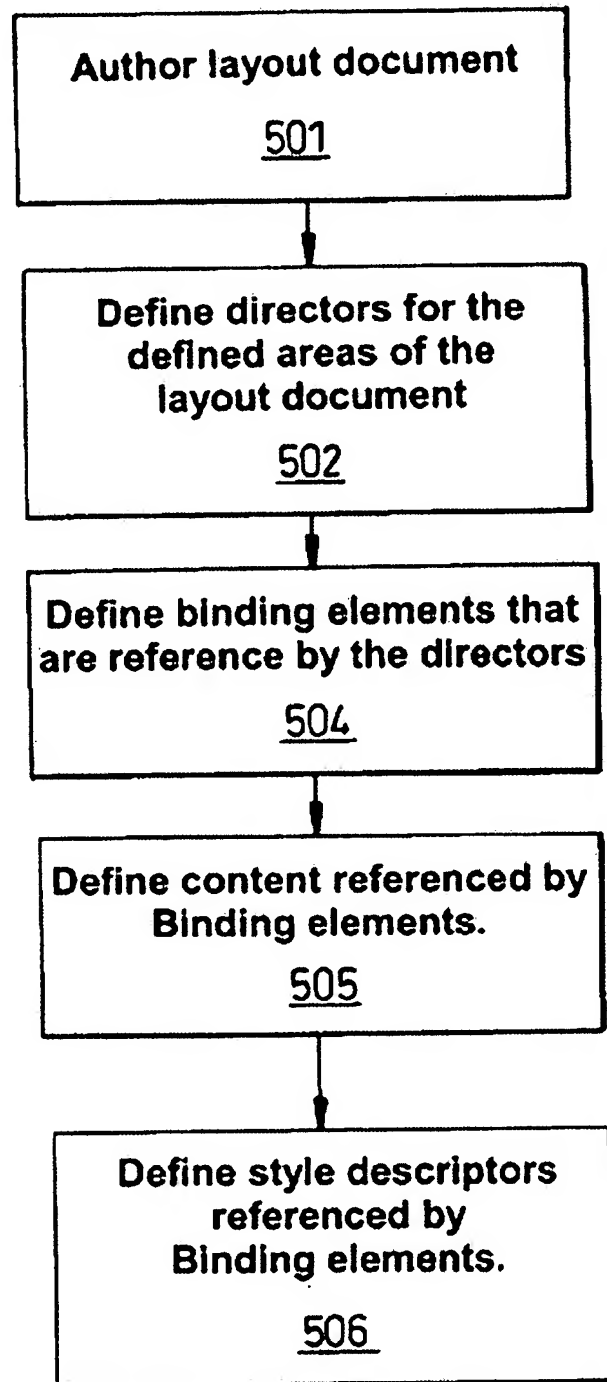
Author layout document
501

Define directors for the
defined areas of the
layout document
502

Define binding elements that
are reference by the directors
504

Define content referenced by
Binding elements.
505

Define style descriptors
referenced by
Binding elements.
506

Fig. 3

Figure 4 of the instant application is an overall representation of the directional relationships between a layout document, two portions of content and two style descriptions:
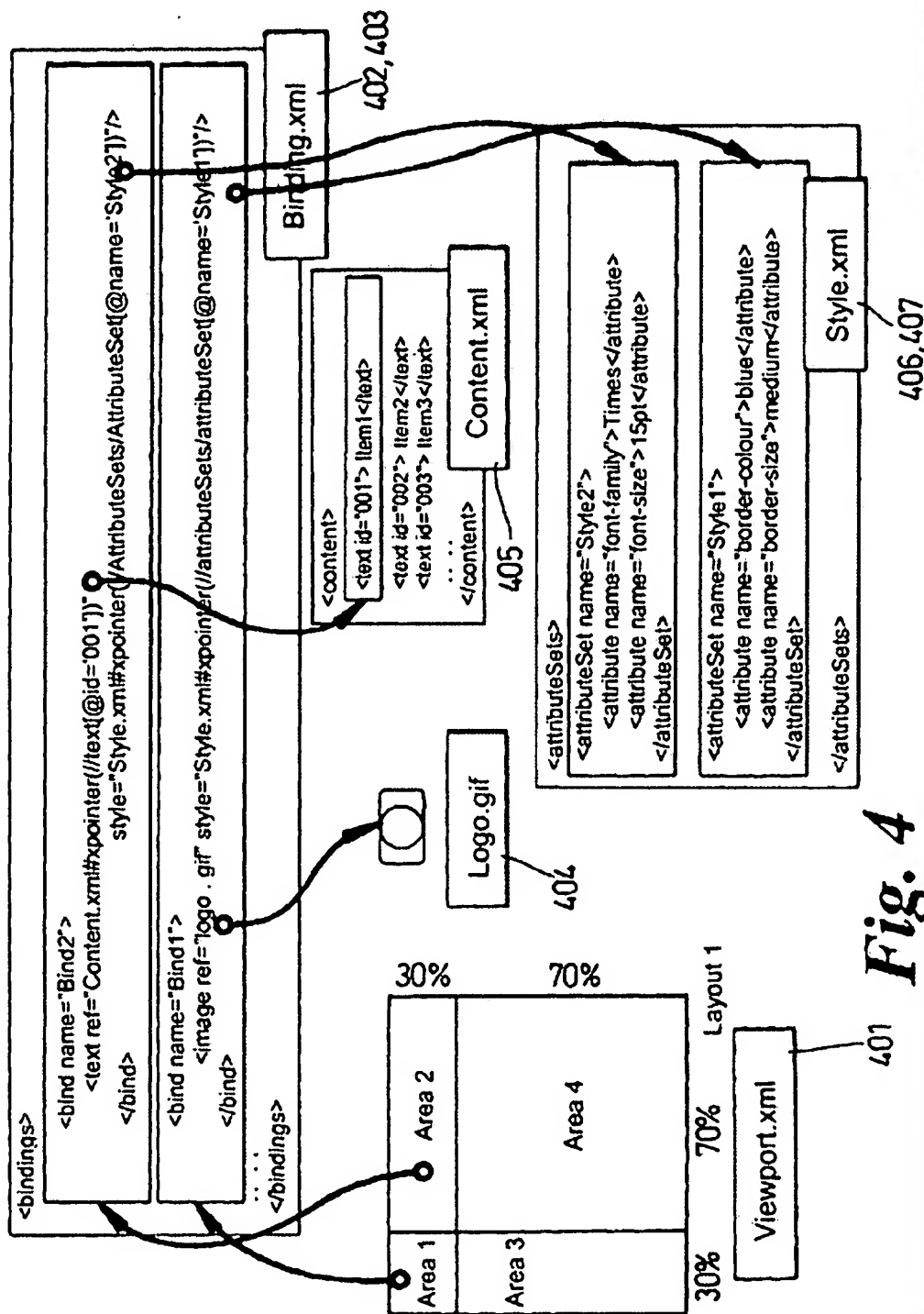

Fig. 4

With reference to Figures 1, 3, and 4 above, claim 1 provides:

1. A method of authoring content to be served by a server (100) comprising:

authoring (501) on a computing device a layout document (401) which defines (502) at least one area of a document which includes the content to be published;

authoring on a computing device at least one binding element (402, 403) which defines (505, 506) the identity and location of at least a portion of content (404, 405) and at least one style description (406, 407) which defines a style to be applied to a selected portion of content;

in which the step of authoring the layout document (401) includes allocating (502) to the at least one defined area a director to at least one binding element such that when processed the published document includes in the defined area the content as directed by the binding element) in the style as directed by the binding element.

Independent Claim 11

With reference to Figures 1, 3, and 4 of the instant application, reproduced above, claim 11 provides:

11. A data structure embodied in a computer-readable medium that is suitable for processing by a server for serving as a document, the data structure comprising:

a layout document (401) which defines at least one area of a document which includes the content to be published;

at least one binding element (402, 403) which defines the identity and

location of at least a portion of content (404, 405) and at least one style description (406, 407) which defines a style to be applied to a selected portion of content;

in which the layout document (401) includes at least one binding element (402, 403) allocated to at least one of the areas such that when processed the published document includes in the defined area the content (404, 405) as directed by the binding element (402, 403) in the style as directed by the binding element (402, 403);

whereby the data structure may be rendered on a device receiving the data structure from the server (100).

Independent Claim 14

With reference to Figures 1, 3, and 4 of the instant application, reproduced above, claim 14 provides:

14.   A data structure embodied in a computer-readable medium that is suitable for programming a processor of a computing device to author servable content, the programmed processor being adapted to:

author (501) a layout document (401) which defines at least one area of a document which includes the content to be published;

author at least one binding element (402, 403) which defines (505, 506) the identity and location of at least a portion of content and at least one style description which defines a style to be applied to a selected portion of content;

in which authoring the layout document includes allocating (502) to the at least one defined area a director to at least one binding element (402,

403) such that when processed the published document includes in the defined area the content as directed by the binding element in the style as directed by the binding element;

whereby the data structure may be rendered on a device receiving the data structure.

Independent Claim 18

With reference to Figures 1, 3, and 4 of the instant application, reproduced above, claim 18 provides:

18.   A system for authoring content to be served comprising:

a layout document processor for producing a layout document (401) which defines at least one area of a document which includes the content to be published;

binding element authoring means for defining at least one binding element (402, 403) which defines the identity and location of at least a portion of content and at least one style description which defines a style to be applied to a selected portion of content, and

in which the layout document processor is arranged to allocate (502) to the at least one defined area a director to at least one binding element (402, 403) such that when processed the published document includes in the defined area the content as directed by the binding element in the style as directed by the binding element.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Issue 1: Whether Claims 1-6, 8-14, and 18 are patentable under 35 U.S.C. § 103(a) over U.S. Patent Publication 2002/0156815 to Davia ("Davia"), and further in view of article "Separating Links form Content using XML, XLink and XPointer" by Anthony J. Duhig ("Duhig")?

ARGUMENT

I   The Rejection of Claims 1-6, 8-14, and 18 under 35 U.S.C. § 103(a) Should Be Reversed and Withdrawn

The Examiner rejected claims 1-6, 8-14, and 18 under 35 U.S.C. § 103(a) as being unpatentable over Davia, and further in view of Duhig. This rejection should be withdrawn at least because neither Davia nor Duhig, singly or in combination, teach or suggest the claimed subject matter.

The Appellant submits that the Examiner has **not** established a *prima facie* case of obviousness for the claims rejected under 35 U.S.C. § 103(a). The Appellant notes:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

> The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in

applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

M.P.E.P. at § 2143.[1] The Appellant submits that a *prima facie* case of obviousness has not been established at least because the Examiner has failed to show that Davia and Duhig teach each and every element as claimed in the present application and has not identified a consistent reason apart from the teaching of the Appellant's specification to make the proposed combination of Davia and Duhig.

Claim 1

Claim 1 is an independent claim and requires:

1. (previously presented)   A method of authoring content to be served by a server comprising:

    authoring on a computing device a layout document which defines at least one area of a document which includes the content to be published;

    authoring on a computing device [1] **at least one binding element which defines the identity and location of at least a portion of content and at least one style description which defines a style to be applied to a selected portion of content;**

    [2] in which the step of authoring the layout document includes allocating to the at least one defined area a director to at least one

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[1] The Office may wish to supplement this portion of the M.P.E.P. in view of the recent Supreme Court case *KSR International Co. v. Teleflex Inc.* (April 30, 2007) and recent Federal Circuit case law such as *Dystar Texilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006). Nevertheless, the quotation from the M.P.E.P. is current. A *prima facie* case of obviousness requires the examiner to show that the cited art teaches or suggests all the limitations of the claims in question.

binding element such that when processed the published document includes in the defined area the content as directed by the binding element in the style as directed by the binding element.

(emphasis supplied).

Neither Davia nor Duhig teach or suggest a binding element "which defines the identity and location of at least a portion of content and at least one style description which defines a style to be applied to a selected portion of content." The Examiner agrees that Davia "fails to teach the use of a binding element for identifying a portion of the content." Final office action mailed on December 22, 2006, at page 2. The Examiner cites Duhig as providing a teaching of "authoring on a computing device at least one binding element which defines the identity and location of <u>at least a portion of content</u> and at least one style description which defines a style to be applied to a selected portion of content." Id. at page 2.

Specifically, the Examiner states that Duhig discusses W3C standard X-pointers in the context of "out-of-line linking" and mentions that an X-pointer "is used to address fragments of another document." Id. at page 2. Thus, "Davia teaches a layout information file that is separate from the content information. Duhig teaches the use of XLink with XPointer to define out-of-line linking for content information located elsewhere such as third-party linking. At the time of the invention it would have been obvious to include a binding element to reference a portion of content." The Examiner concludes that "it would have been obvious to combine the teachings of Duhig with Davia for separation of content from layout **thereby improving the maintainability of the code.**" Id. at page 3 (emphasis added).

Furthermore, the examiner must provide "some articulated reasoning with rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

The specification of the instant application teaches that XML extensible mark-up language may be used to carry out the method of the invention in producing a set of data structured according to a set of rules. See page 9, line 21 to page 10, line 10, and page 10, line 24 to page 13, line 36.

Duhig is merely a discussion of linking using XML, XLink, and XPointer. The problem addressed in Duhig is solving the problems of inline linking, such as maintaining the validity of links, modifying content, providing multiple link sets, and mimicking bi-directional links. Duhig shows how to do so by using out-of line linking employing W3C's XLink standard. The XLink uses another W3C standard called XPointer to address sub-resources.

The Examiner's "Response to Arguments" at pages 7-8 of the final office action mailed on December 22, 2006 addressed the Appellant's argument that neither Davia nor Duhig teach or suggest a "binding element" by arguing that "[i]t would have been obvious to one of ordinary skill in the art to access content using XLink with XPointer to reference functions defining the style of the content. The motivation for doing so would have been to access style functions located separately using XPointer therefore reducing the amount of code in a document."

Duhig does not teach or suggest that XPointers may be used to address either the content or style of a document. In the non-final office action mailed on June 13, 2006, the Examiner noted that the *Appellant* (the Examiner specifically mentions "fig 4 of applicants drawings") uses XPointers to reference content in one file and style in another file. Id. at page 4-5. The Examiner was referring to the binding elements 402 and 403 disclosed in the preferred embodiment and indicated on Figure 4 of the drawings.

It was not acceptable to use the Appellant's disclosure of his own invention in the specification as a reference against him. The Examiner essentially argued that because the Appellant teaches the use of XML and XPointers in practicing the preferred

embodiment, the prior existence of these tools makes the limitation obvious. Under this logic, if the Appellant first taught and claimed building a house using tools such as a saw, hammer, drill, etc., the Examiner would reject the claimed subject matter because the tools were already known and the motivation was provided by the Appellant's disclosure (build a house).

In the "Response to Arguments," at page 8 of the final action, the Examiner agreed that it was "inappropriate to use applicants [sic] reference against him" and argued that he cited the specification of the application to determine the meaning of the term "binding element." Furthermore, he argued that he had already provided a motivation using the two references of Davia and Duhig that does not rely on applicant's specification, namely, "[o]ne of ordinary skill would realize the uses of XPointer and XLink with content because they provide the advantage to access portions of code (style information described above) located in separate files thereby reducing the amount of code in a single document."

The motivation or reason for combining the teachings of Duhig and Davia in the formal rejection on page 3 of the final office action is, however, "improving the maintainability of the code." The Examiner is not consistent in his choice of reasons for combination. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn,* 441 F.3d 977, 988 (Fed. Cir. 2006)(quoted with approval in *KSR International Co. v. Teleflex, Inc.,* 550 U.S. ___, 2007 WL 1237837, at *14 (2007)). The inconsistency of reasoning indicates that "articulated reasoning with some rational underpinning" was not provided.

The Examiner therefore has not established that Davia or Duhig teach or suggest "at least one binding element which defines the identity and location of at least a portion

of content and at least one style description which defines a style to be applied to a selected portion of content" unless the disclosure of the Applicant's preferred embodiment is used as a reference against him. Furthermore, neither Davia nor Duhig teach or suggest styles at all.

Neither Davia nor Duhig teach or suggest "the step of authoring the layout document includes allocating to the at least one defined area a director to at least one binding element such that when processed the published document includes in the defined area the content as directed by the binding element in the style as directed by the binding element."

For at least these reasons, the Examiner has not established that **the references when combined teach or suggest all the claim limitations**. A *prima facie* case of obviousness therefore has not been established for claim 1 for at least this reason. The section 103(a) rejection of claim 1 should be withdrawn.

Claims 11, 14, and 18

Claims 11, 14, and 18 are the other independent claims pending in this application. Although directed to a data structure embodied in a computer-readable medium (claims 11 and 14) or a system for authoring content to be served (claim 18), these claims all contain the "binding element" limitation: "at least one binding element which defines the identity and location of at least portion of content and at least one style description which defines a style to be applied to a selected portion of content." As discussed above, "binding elements" are not taught or suggested by Davia in view of Duhig. For at least this reason the Examiner has not established that the references when combined teach or suggest all of the limitations of any of these claims.

A *prima facie* case of obviousness therefore has not been established for claims 11, 14, and 18. The Section 103(a) rejection of claims 11, 14, and 18 should be reversed and withdrawn.

Claims 2-10, 12, and 13

Claims 2-10 depend from independent claim 1 directly (claims 2, 3, and 5-10) or indirectly (claim 4). Claims 12 and 13 depend from independent claim 11. Independent claims 1 and 11 are allowable over the Davia and Duhig references as explained above. For at least this reason, the Section 103(a) rejection of the dependent claims should be reversed and withdrawn.

II.   The Status of Claim 7 Should Be Identified

As noted above, the Examiner withdrew an objection to claim 7 in the final office action mailed on December 22, 2006. He did not reject, allow or object to claim 7 even though it was a pending claim. The Examiner is invited to clarify its status. Claim 7 depends from claim 1 and is believed to be allowable for at least that reason.

CONCLUSION

For the reasons given above, the Appellant respectfully contends that claims 1-14 and 18 are patentable over the references of record. The Appellant respectfully submits that the Board should reverse and withdraw all rejections of the claims pending in the instant application.

* * *

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 08-2025. In particular, if this Appeal Brief is not timely filed or the petition for extension of time accompanying this

brief is incorrect in stating or paying for the amount of time requested, the Commissioner

is authorized to treat this response as including a petition to extend the time period

pursuant to 37 CFR 1.136(a) requesting an extension of time of the number of months

necessary to make this Appeal Brief timely filed and the petition fee due in connection

therewith may be charged to deposit account no. 08-2025.

I hereby certify that this correspondence is being deposited with the United States Post Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 25, 2007.

Lucy C. Derby
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(Signature)

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1.   A method of authoring content to be served by a server comprising:

authoring on a computing device a layout document which defines at least one area of a document which includes the content to be published;

authoring on a computing device at least one binding element which defines the identity and location of at least a portion of content and at least one style description which defines a style to be applied to a selected portion of content;

in which the step of authoring the layout document includes allocating to the at least one defined area a director to at least one binding element such that when processed the published document includes in the defined area the content as directed by the binding element in the style as directed by the binding element.

2.   The method of claim 1 in which the binding element does not itself contain any style or content, only containing directors to style or content.

3.   The method of claim 1 in which the content is provided as an electronic file which contains a portion of text, or an image, or a combination of text and image content.

4.   The method of claim 3 in which the file comprises a section of data written for example in a mark-up language such as XML.

5.   The method of claim 1 in which the style description is provided in the form of an electronic file written for example in a mark-up language such as XML.

6.   The method of claim 1 in which the director to a binding element provided in the layout document is defined as an attribute within a section of machine readable data

written in a mark-up language.

7.   The method of claim 1 in which more than one style description is provided.

8.   The method of claim 1 which comprises defining a binding element which defines the identity and location of more than one style description or the identity and location of more than one portion of content.

9.   The method of claim 1 comprising the step of defining two or more binding elements which direct to a common portion of content or style description.

10.   The method of claim 1 in which more than one binding element is provided, and the layout document includes a director to some or all of the total number of binding elements.

11.   A data structure embodied in a computer-readable medium that is suitable for processing by a server for serving as a document, the data structure comprising:

        a layout document which defines at least one area of a document which includes the content to be published;

        at least one binding element which defines the identity and location of at least a portion of content and at least one style description which defines a style to be applied to a selected portion of content;

        in which the layout document includes at least one binding element allocated to at least one of the areas such that when processed the published document includes in the defined area the content as directed by the binding element in the style as directed by the binding element;

whereby the data structure may be rendered on a device receiving the data structure from the server.

12.   The data structure of claim 11 which comprises one or more discrete sections of machine readable data, a first section defining the a layout document, a second section defining the at least one binding element and a third section defining content, and a fourth section defining at least one style description.

13.   The data structure of claim 12 in which the discrete sections form part of a single file of machine readable data or separate files of machine readable data.

14.   A data structure embodied in a computer-readable medium that is suitable for programming a processor of a computing device to author servable content, the programmed processor being adapted to:

author a layout document which defines at least one area of a document which includes the content to be published;

author at least one binding element which defines the identity and location of at least a portion of content and at least one style description which defines a style to be applied to a selected portion of content;

in which authoring the layout document includes allocating to the at least one defined area a director to at least one binding element such that when processed the published document includes in the defined area the content as directed by the binding element in the style as directed by the binding element;

whereby the data structure may be rendered on a device receiving the data structure.

18.   A system for authoring content to be served comprising:

a layout document processor for producing a layout document which defines at least one area of a document which includes the content to be published;

binding element authoring means for defining at least one binding element which defines the identity and location of at least a portion of content and at least one style description which defines a style to be applied to a selected portion of content, and

in which the layout document processor is arranged to allocate to the at least one defined area a director to at least one binding element such that when processed the published document includes in the defined area the content as directed by the binding element in the style as directed by the binding element.

* * * *

NONE.

NONE.